IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

INSOLVENCY PETITION NO.137 of 2004

M/s Saral Enteprises

and Ors. ..Debtors

Exparte

Ashok Thapar and Ors.Petitioning Creditor

Mr.Kishore Jain i/b Mr.P.V.Shah for Petitioning Creditor

Mr.Uday Bobde i/b Denzil D/Mello for Debtors nos 1 and 2

CORAM:DR.D.Y.CHANDRACHUD,J.

1st February 2005

P.C.:-

. The Insolvency Notice dated 5-9-2003 was based on judgment and decree of an amount of Rs.7.60 cores. A Notice of Motion was taken out for setting aside the Insolvency notice. It is common ground that the Notice of Motion was dismissed and the appeal against that order was also dismissed. Though Petition was adjourned on 19th October 2004 and 7th December 2004, no affidavit has been filed.

. Counsel appearing on behalf of the Judgment

Debtor submitted that since a residential flat has already been sold this fact ought to have been disclosed and that the insolvency petition is not maintainable having regard to the provisions of Section 12(2) of Presidency Town Insolvency Act, 1909. The Insolvency petition is in my view maintainable since in the present case it is common ground that the flat was sold for a consideration of Rs.2.40 crores. The amount which is due and payable under the decree is well in excess of the value that has been realised from the sale of the residential flat. For the balance of the claim of the petitioning creditor, he must rank together with the general body of creditors. Counsel appearing on behalf of the Judgment Debtor then prays that some time may be granted to file an affidavit so as to place those submissions on record. There is no reason to do so, after the matter is fully argued. Adequate time has been already granted since 19th October, 2004. In any event, having regard to the submissions made, it is clear that there is absolutely no merit in the defence.

. The Insolvency petition is made absolute in terms of prayer clause (a).

(DR.D.Y.CHANDACHUD,J.)